

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

NARAY PALANIAPPAN,

Defendant.

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MEMORANDUM AND ORDER

Case No. 1:15-cr-00485-FB-1

Appearances:

For the United States:

BREON PEACE

United States Attorney

Eastern District of New York

By: LORENA MICHELEN

Assistant United States Attorney

271 Cadman Plaza East

Brooklyn, NY 11201

For the Defendant:

NARAY PALANIAPPAN, PRO SE

BLOCK, Senior District Judge:

On September 7, 2022, Naray Palaniappan filed his third motion seeking compassionate release under 18 U.S.C. 3582(c)(1)(A). For the following reasons, Palaniappan's motion is denied.

Palaniappan has served just over half of his mandatory 60-month sentence for the receipt of child pornography. His first motion for compassionate release was brought in the early days of the COVID-19 pandemic. He argued that his sentence should be reduced because of the risks posed to him by the virus as someone with

diabetes, high blood pressure, high cholesterol, and obesity, and because his wife was the sole caregiver for the couple's children. At the time of his motion, Palaniappan had served less than 3 months of his sentence, and unfortunately, the circumstances he briefed with regard to the COVID-19 pandemic were all but ordinary at the time. On April 16, 2020, the Court denied his motion. Less than four months later, Palaniappan renewed his motion, again arguing for compassionate release based upon the risks of the COVID-19 pandemic to his health. The Court denied the motion on August 27, 2020.

Now, Palaniappan moves pro se for compassionate release based upon: (i) his health in combination with the risks associated with COVID-19, (ii) the more punitive nature of incarceration during the pandemic, (iii) the need to support his family, and (iv) his rehabilitation. The Court has carefully considered the parties' arguments and the controlling legal framework and is unpersuaded that Palaniappan has presented "extraordinary and compelling reasons" justifying his release or a reduction in his sentence at this time. *United States v. Brooker*, 976 F.3d 228, 237 (2d. Cir 2020).

Palanappian's health problems do not appear to have changed significantly since his last motion. Notably, he is vaccinated against COVID-19. Courts in this circuit have denied motions that rely primarily on COVID-related issues on this basis. *See United States v. Folkes*, No. 18-CR-257 (KAM), 2022 WL 1469387, at *6

(E.D.N.Y. May 10, 2022) (collecting cases). Palaniappan has also contracted and recovered from the virus, and apparently had an asymptomatic case, weakening the argument that in his particular case, COVID-19 may be fatal in combination with his aforementioned health problems.

The pandemic undoubtedly has made the circumstances of incarceration more punitive. *See, e.g., United States v. Rodriguez*, 492 F. Supp. 3d 306 (S.D.N.Y. 2020). However, this is a circumstance that has affected virtually every incarcerated individual, and in combination with the other factors presented by Palaniappan, does not rise to the level of extraordinary and compelling. The family circumstances Palaniappan cites, namely his wife's difficulty in caring for the couple's children while earning a living during the pandemic, also fail to meet the bar of extraordinary and compelling. Unfortunately, this circumstance is another common one among inmates with families.

Lastly, while Palaniappan's good behavior is commendable, it is not extraordinary even when considered in combination with the other factors he presents. Where a criminal defendant seeks "decreased punishment, he or she has the burden of showing the circumstances warrant that decrease." *United States v. Butler*, 970 F.2d 1017, 1026 (2d Cir. 1992). Here, Palaniappan has failed to meet his burden of establishing "extraordinary and compelling" circumstances. *Brooker*, 976 F.3d at 237.

CONCLUSION

For the foregoing reasons, the defendant's motion for compassionate release is DENIED.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
October 14, 2022